

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration Between:

BOROUGH OF CLOSTER

"Public Employer,"

- and -

PBA LOCAL 233

"Union."

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2008-042

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Borough:

Edward T. Rogan, Esq.
Edward Rogan & Associates

For the PBA:

Richard D. Loccke, Esq.
Loccke, Correia, Schlager,
Limsky & Bukosky

The Borough of Closter [the "Borough"] and PBA Local 233 [the "PBA"] are parties to a collective negotiations agreement [the "Agreement"] that extended through December 31, 2007. An impasse developed between the Borough and the PBA resulting in the submission of the dispute to interest arbitration pursuant to the rules of the New Jersey Public Relations Employment Commission. In accordance with the rules of PERC, I was designated to serve as interest arbitrator.

The terminal procedure was conventional arbitration because the parties did not mutually agree to an alternative terminal procedure. Under this process the arbitrator has broad authority to fashion the terms of an award based upon the evidence without being constrained to select any aspect of a final offer submitted by either party.

Pre-interest arbitration mediation sessions were held on May 16, June 25 and August 8, 2008. These efforts did not produce a voluntary agreement leading to the convening of a formal hearing that was held on November 24, 2008. Testimony, documentary evidence and certifications were offered by the parties. Testimony was given by Sergeant Alphonso Young, Jr., Police Officer Thomas Breueck, Borough Administrator John DiStefano and Chief of Police David Berrian. Post-hearing briefs were filed by each party, the last of which was received on December 12, 2008. At that time, the record was deemed closed.

As required by statute, the Borough and the PBA submitted the following last offers on the issues in dispute.

PBA'S FINAL OFFER

1. **Wage Increase** – The PBA proposes a four (4) year contract with a five (5%) percent wage increase effective January 1 of each year on an across-the-board basis.
2. **Work Schedule** – The PBA proposes a modified work schedule. The details of the work schedule were as presented directly to the Employer and discussed in detail. The Chart proposed is commonly referred to as the "Pitman Work Schedule" which is a twelve (12) hour work sequence. The Chart sought is that which the Borough of Closter Police Department had utilized for several years in the recent past.
3. **Work in Higher Rank** – The PBA proposes that there be a deletion of the current four (4) month delay provision at lines one and two of Article XLII of the Work Contract (page 51). The work in higher rank compensation rate would therefore be effective upon designation of working in said rank.

BOROUGH'S FINAL OFFER

1. **Salaries – Contract Section 7.00 and Appendix A**

The Borough had proposed an across-the-board salary increase for the upcoming three (3) year period of 2.75%. Up and until the time of the arbitration, the PBA's demand was at 6% for each of the years. Just prior to the arbitration, there was discussion that the PBA would reduce its demand to 5% and the Borough would consider increasing to 3%. That was found to be unacceptable and the arbitration proceeded.

2. **Longevity – Contract Section 15.00**

The Borough also sought a cap on current employees' longevity increases and the elimination of longevity for new hires, which the PBA opposed.

3. **Sick Leave – Contract Section 20.00**

The Borough proposes that any sick time be paid hour for hour rather than permitting an officer to work 4 hours, then leave and not be charged a sick day.

4. **Work In Higher Rank – Contract Section 42.00**

The Borough has proposed an increase in pay for work in a higher rank from shift 1. The current contract provides that an officer working in a higher rank will not be paid in that higher rank unless he serves in that rank for a period of 4 months. There was some discussion that the Borough might agree to reducing the amount to three months, however, that was contingent on other concessions from the PBA which were not forthcoming. Therefore, the Borough's position on this issue is that pay for work in higher rank should remain at four (4) months.

5. **Medical and Dental Coverage – Contract Section 25.00**

The Borough also sought some contribution for co-pay of health insurance, i.e., \$20.00 per month for an individual, \$40.00 per month for a family. The PBA opposes any contributions to medical and or dental insurance.

6. **Education Incentive – Contract Section 21.01**

The Borough proposes that the terms and conditions of the contract should be revised for purposes of earning college credit. The allowance of \$1,000.00 per year should only be provided if an officer was actually earning or earned college credits in that calendar year.

7. **Uniforms – Contract Section 16.00**

The PBA also sought an additional uniform allowance for all of its officers, which the Borough opposes.

8. **Holidays – Contract Section 19.00 and Appendix C**

The PBA proposes increasing the number of holidays from 13 to 14 which the Borough opposes.

9. **Mileage Allowance – Contract Section 36.00**

The PBA proposes increasing reimbursement of mileage for outside activity from \$.15 per mile to \$.32 per mile. In light of decreasing gasoline prices, the Borough contends the more than 100% increase is unwarranted.

10. **Work Day (8-Hour Shifts) – Contract Section 8.0**

The PBA requested consideration of a 12 hour shift versus the 8 hour shift currently provided for in the parties' existing contract.

The Borough opposed the change for a number of reasons which shall be more specifically detailed herein.

BACKGROUND AND POSITIONS OF THE PARTIES

The public employer in this matter is the Borough of Closter, a 4.5 square mile municipality located in the northeast part of Bergen County. It is populated by 8,383 residents.

The Borough employs twenty-two (22) sworn personnel including one (1) Chief, two (2) Lieutenants, six (6) Sergeants and thirteen (13) patrol officers.

At hearing, testimony and documentation was presented concerning the operations of the police department. Though the Borough is not heavily populated, its location and road structures provide for heavy traffic flow. A County of Bergen Traffic Engineering Report shows substantial vehicular flow through several key intersections.

The police department houses an Inter-Borough Policing System that, in addition to Closter, includes the Boroughs of Alpine, Harrington, Park, Howarth, Northvale, Norwood and Rockleigh to facilitate mutual aid. The System is managed by a Closter police supervisor. The Borough also participates in an Inter-Borough Radio and Dispatch System. It is managed by sworn and civilian personnel from Closter with a goal of providing "a common vehicle fully dedicated to providing prompt and efficient communications within the said municipalities." The system dispatches police, fire, borough vehicles and other emergency services to the seven municipalities region and, according to the testimony of Sergeant Alphonso Young, Jr., makes judgment calls on pursuits, appropriate emergency responses and directions to police officers in connection with calls and emergencies.

Closter is clearly the busiest town in the seven (7) town Inter-Borough District. Introduced as Exhibit P-9 by the PBA is the Inter-Borough Report on Police activity broken down by towns within the District. In every case, without exception, Closter is number one in activity. With respect to calls on both a Year-to-Date basis for 2008 and 2007 total, of all calls in the seven (7) town District, over fifty percent (50%) are Closter calls. Year-to-date 2008, for example shows a total calls-to-date of seventeen thousand two hundred eight (17,208). Of these, nine thousand seven hundred forty-four (9,744) or fifty-seven percent (57%), come from the single participant Borough of Closter. No one else is even close. Referring to 9-1-1 calls, Closter is once again the highest of all. With respect to dispatched calls for all of 2007, there were a total of eighteen thousand four hundred fifty-five (18,455) reflected on page 2 of Exhibit P-9. Of this eighteen thousand four hundred fifty-five (18,455), the statistics show that ten thousand one hundred eighty-five (10,185), or fifty-five percent (55%) were Closter calls. The statistics reflected for both 9-1-1 calls and dispatched calls on P-9 cover a four (4) year period. In every year and in every category Closter is not only number one but actually is represented by more than fifty percent (50%) of all calls received in the seven (7) town

system. The other smaller portion, less than one-half (1/2) is distributed among six (6) other towns. Closter is clearly the busiest town in the District, and clearly the most active in every level of measurable law enforcement.

The responsibilities borne by the Borough are funded by monies funds received from the aforementioned municipalities. According to the Agreement to Operate the Interboro Regional Police Communications Network dated February 29, 2008, the aggregate annual cost of operating the network was \$505,123.00.

In support of the amount of police activity, the PBA offers an Interborough Accident Matrix showing that Closter ranks at a high level of accident calls compared to the other municipalities [P. Ex. #10]:

**Interborough Accident Matrix
2004-2008**

	Closter	Alpine	Harrington Park	Haworth	Northvale	Norwood
2004	484	75	71	55	112	133
2005	527	74	84	53	127	108
2006	460	72	67	63	106	98
2007	434	82	91	77	146	117
2008	<u>374</u>	<u>75</u>	<u>68</u>	<u>63</u>	<u>175</u>	<u>122</u>

2008 is partial data

The police department has experienced tension over its work schedule during the course of the last several years. The issue is a main source of

disagreement in this proceeding. The Agreement, at Article VIII, provided for the following work schedule:

8.01 The normal work day tour shall be eight (8) hours in a twenty-four (24) hour period which shall include within the eight (8) hour span, forty-five (45) minutes of mealtime per day as well as appropriate rest periods.

8.02 There shall always be sixteen (16) hours of time off between tours of work. The normal work week shall be forty (40) hours in a seven (7) consecutive day period. Work in excess of the Employee's basic work week or tour for a day is overtime.

Notwithstanding the above, between 1999 and 2005, a twelve (12) hour schedule was placed into effect. However, the language of the Agreement providing for an eight (8) hour day was not changed throughout the six (6) year period although the PBA contends that it was the subject of negotiations continuing the twelve (12) hour schedule. Because the Chief of Police determined that performance statistics were lower and sick time had increased, the Chief implemented the eight (8) hour shifts in 2006 that pre-dated the 1999 change to twelve (12) hours. The PBA disagreed over the reasons for the change and claimed that the reasons asserted were pretextual and a retaliation for its challenge to an alleged edict that police officers meet a quota for the issuance of citations, a claim the Borough denies. The PBA sought to restrain the reversion to the eight (8) hour shifts with the Public Employment Relations Commission (PERC) but was denied the restraint based in large part upon the existence of the contract language that contained the eight (8) hour work schedule.

During the processing of the unfair practice, the parties reached a settlement agreement withdrawing the unfair labor practice and referring the issue to these collective negotiations. The PBA's proposal then became the subject of a scope of negotiations petition that the Borough filed with PERC challenging the negotiability of Article 8.01 and the PBA proposal to return to the twelve (12) hour work schedule.

Citing Maplewood Township, PERC No. 97-80, 23 NJPER 106, 113 (¶28054, 1997) and case cited therein, PERC dismissed the Borough's negotiability claim and held:

[O]n this record, the PBA's proposal would not result in the severe coverage and supervision problems found to preclude negotiations altogether in *Irvington* and *Atlantic Highlands*.

As in *Maplewood*, we do not discount the employer's concerns; we decide only that they are not so compelling and so incontrovertible as to warrant cutting off negotiations and the interest arbitration process altogether. Both parties may present their concerns to each other and may develop a full record enabling an interest arbitrator to evaluate their concerns in light of the specifics of any PBA proposal, the public interest, and all the statutory criteria. Nothing we have said should be construed as commenting on the merits of the work schedule issue in negotiations or interest arbitration.

Testimony on the work schedule issue was received in this proceeding from Chief of Police David Berrian and from Police Officer Thomas Brueck. Their testimony essentially paralleled the factual assertions that the parties made in certifications presented to PERC during the negotiability proceeding. The PBA

contends that the efficiency, productivity and morale of the department would improve under the twelve (12) hour work schedule while the Chief disagrees with the PBA testimony.

In addition to the work schedule issue, the Borough and PBA disagree over the longevity issue. At Article 15.00, the Agreement now provided for longevity as follows:

15.01 In addition to all wages and other benefits, each Employee shall be entitled to a longevity payment as follows:

Longevity shall be one (1%) percent upon completion of three (3) years service and one-third of one (1/3%) percent of the Employee's base wages for such additional year of completed service. Employees hired on or after January 1, 1997 shall commence to receive longevity upon completion of six (6) years of service.

15.02 All employment dates for purposes of the longevity clause shall be considered to be the first day of January of the year of initial employment.

15.03 The said payments for longevity shall be paid on a weekly basis to the Employees entitled to same.

The Borough seeks to eliminate the existing longevity benefit for new hires. The Borough asserts that:

As with salary increases, the PBA relies heavily on comparables while the Borough's position is based on financial impact and negative effect on taxpayers. Moreover, it is important to point out that in most of the comparables provided by the PBA, demonstrate a trend toward eliminating or capping longevity. A brief list, which is not meant to be exhaustive, demonstrates this point:

- City of Hackensack – longevity eliminated for new hires after 9/1/2000 (Section 9.3(c))
- Borough of Cresskill – caps longevity (Appendix B)
- Borough of Demarest – caps longevity (Section 19.01)
- Borough of East Rutherford – caps longevity (Appendix B)
- Borough of Edgewater – caps longevity (Appendix B)

Moreover, the Borough has demonstrated that longevity increases create a large financial burden on the municipality which, given current trends and economic circumstances, must be addressed. As shown in B-8, the salaries of PBA members are generously supplemented by the current longevity schedule.

On this issue, the Borough proposes the elimination of longevity for newly hired police officers. This will not impact current employees. Moreover, the Borough is currently working to eliminate this provision for newly hired (non-police) employees as well. Hence, the Borough requests that the arbitrator allow a change to Section 15.00 of the Contract, eliminating longevity for newly hired members of the police department effective 1/1/2009.

The PBA rejects this proposal arguing that morale within the department would suffer if new employees did not enjoy a benefit held by existing employees. The PBA further contends that the elimination of longevity has only occurred in relatively few departments elsewhere.

The parties also disagree on the issue of salary increases. The Borough proposes a four (4) year agreement with two and three quarter (2.75%) percent increases each year, while the PBA proposes an agreement of the same duration but with annual increases of five (5%) percent.

The PBA contends that its proposal is supported by comparability evidence and the financial condition of the Borough which it claims is very

healthy. Based upon contracts it has submitted into evidence, the PBA submits a chart reflecting base rate changes in contract years 2008 through 2011.

Base Rate Changes in Percent of Change Based on PBA Exhibits

	2008	2009	2010	2011
Demarest	4.25			
Bergenfield	4.75 (2.75/2)			
Cresskill	3.95	3.95	3.95	3.95
East Rutherford	5 (2/3)	5 (2/3)		
Edgewater	4	4		
Elmwood Park	3.95	3.95	3.95	3.95
Glen Rock	4	4	4	
Hackensack	4	4		
Harrington Park	4			
Hasbrouck Heights	4	4		
Haworth	4.4	4.4	4.4	4.4
Leonia		3.9	3.9	3.9
Lyndhurst	3.95	3.95		
Mahwah	5.6	5.9	6	
Norwood	4			
Northvale	4	4	3.95	3.85
Oakland	5.2	4.2	4.2	
Old Tappan	4.25	4.25		
Ridgewood	4.2 (2.1/2.1)	4.2 (2.1/2.1)	4.2 (2.1/2.1)	4.2 (2.1/2.1)
Saddle Brook	4	4	4	4
Tenafly	4			
Wood Ridge	4 (2/2)	4 (2/2)	4 (2/2)	4.5 (2.25/2.25)
Alpine	4			
Averages	4.25%	4.218\$	4.23%	4.09%

The PBA contends that the comparability it seeks can be funded without interference with the Borough's statutory spending limitations and without adverse financial impact on the Borough, its residents and taxpayers. Based upon the official budget documents in evidence, the PBA makes the following arguments:

First to be reviewed will be the expenditure side of Cap calculation. Specific evidence with respect to this subject matter is found in two (2) places in the evidence. First, the complete 2008 Budget is submitted by the PBA as Exhibit P-17 and further the actual "Borough of Closter 2008 Budget Workbook" prepared by the Borough was introduced by the Employer at hearing as Exhibit B-9. B-9 at page number 1, Schedule 1, captions the calculations as "Borough of Closter 'Cap' Calculation". At the bottom of the page there is a clear statement with respect to the flexibility and the amount that the Budget was adopted under the Expenditure Cap. The last line is captioned "Amount Below Allowable Appropriations" and the amount is Two Hundred Thirty-Five Thousand Four Hundred Thirty-Three Dollars (\$235,433.00). Therefore, the amount of Cap flexibility in the 2008 Budget is Two Hundred Thirty-Five Thousand Four Hundred Thirty-Three Dollars (\$235,433.00). Compared to the value of a base wage point (See Chart No. 2 on preceding page) of Twenty-One Thousand Six Hundred Sixty Dollars (\$21,660.00), the value of the flexibility alone under the Cap Law represents 10.9 percentage points of flexibility. The PBA is not suggesting that this Cap flexibility equals cash which can be spent on the PBA wages. However, it is clear that significant flexibility under the Expenditure side of the equation exists. There is absolutely no Expenditure side Cap issue in this town.

The Employer prepared Budget Workbook (B-9) at page 2, Schedule 2 has calculations under the caption "Borough of Closter Municipal Tax Levy 'Cap' Calculation". This page contains the actual calculations with respect to the Tax Levy Cap. After all the calculations are done, the last line on page 2 is captioned "Amount in Excess of Allowable Levy" and shows a sum of Four Hundred Eighty-Three Thousand Ninety-Six Dollars (\$483,096.00). This means that the Borough could have raised taxes by an additional Four Hundred Eighty-Three Thousand Ninety-Six Dollars (\$483,096.00) without having any conflict with the Levy Cap. Again, for comparison purposes only the value of a total Bargaining

Unit Base Wage point (See Chart No. 2 above) as compared to the excess ability to tax under the Levy Cap represents 22.3% Bargaining Unit points for 2008 alone. Again, these numbers are used for comparison purposes only to illustrate the magnitude of the calculations under the Cap limit. The PBA is not suggesting that taxes be raised to pay this Award. Once again however it is clear that there is absolutely no Levy problem as there was no Expenditure Side problem on either the Cap Law or the Levy Cap Law. There is no prohibition to a payment of the full value of the Award under these calculations done by the Borough.

The Borough of Closter has one of the largest ratable bases in the area and one of the lowest tax rates. The "net valuation taxable" for the last completed year calculations available, 2007, is stated at the top of the Annual Financial Statement (P-18). The "net valuation taxable" therein is stated at Two Billion Three Hundred Seventy-Three Million One Hundred Eight Thousand Two Hundred Sixteen Dollars (\$2,373,108,216.00). This is more than double bordering Haworth (Nine Hundred Eighty-Three Million Nine Hundred Twenty-Seven Dollars (\$983,000,927.00)), approximately double nearby Harrington Park (One Billion One Hundred Twenty-three Million Five Hundred Five Thousand Dollars (\$1,123,505,000.00)), more than double neighboring Northvale (One Billion Thirteen Million Three Hundred Five Thousand Dollars (\$1,013,305,000.00)) half again the aggregate true value in Norwood (\$1.5 Billion), and significantly higher than nearby Old Tappan (\$1.9 Billion). These numbers are all reflected on the County's "Final Equalization Table" for year 2008 placed into evidence by the PBA (P-20).

The Borough rejects the PBA's salary position and contends that its own proposal is fair and reasonable in light of the economic circumstances:

... the Borough entered into evidence various documents indicating financial stress of the Borough in recent years and especially this past year. Including:

- o Schedule 10 (Exhibit B-7) of the budget showing that in the calendar year 2004, the surplus balance available was \$600,379.00; in 2005 the surplus balance was \$518,022.00; in 2006 the surplus balance was \$307,104.00; and in 2007 the surplus balance was \$231,907.00 (unaudited for 2007).

- Evidence was produced concerning the increase in PRFS payments from 2005 (\$50,944.40); 2006 (\$168,245.00); 2007 (\$360,904.80); 2008 (\$527,100.00) (Exhibit B-6).
- The Borough also moved into evidence graphics demonstrating the decrease in municipal court generated fees to the Borough from police officers writing of tickets. (Exhibit B-5). The charts specifically demonstrated that revenue generated from municipal court fees from police generated activity has continually declined since 2004. The evidence demonstrated that 2004's collections were \$150,825.00; 2005's collections were \$111,972.00; 2006's collections were \$99,019.00; 2007's collections were \$94,445.00.
- The data evaluating Traffic Summons and Warnings (B-2, B-3) demonstrates the dramatic decrease in productivity, particularly in the last two years when most of the patrolmen have written less than 50 tickets each.
- The data evaluating arrests shows a dramatic drop in arrest rates, particularly in 2006 and 2007 (B-4).

The conclusion from this data cannot be clearer: costs are up and revenues are down. That includes revenue directly related to police work including municipal court revenue, traffic summons and arrests.

In support of its position that the members salaries should be increased above 2.75%, the PBA entered dozens of contracts and decisions of other municipalities (pursuant to subparagraph 2 of the statute cited above) as a comparison of wages, salaries, hours and conditions of employment. **The Borough's position is that although comparables are a factor to be considered, they are not the only factor or even the controlling factor.**

Moreover, while these multi-year contracts show pay increases ranging from 3.9% (e.g., Lyndhurst, Leonia) to approximately 7% (e.g., Harrington Park), all were negotiated *prior* to this year. This year, the Borough's financial position is far less favorable than prior years, including 2004, the year in which the last contract was negotiated. Like many New Jersey municipalities, the Borough is suffering from rising "hard" costs (salaries, pensions, benefits) and reduced tax revenues. In fact, the State Division of Taxation has ordered the Borough to reassess its properties for 2009 and the Borough expects a further reduction in its real estate tax revenues due to declining values.

In sum, although the PBA relies solely on comparables pursuant to paragraph 2 of the above cited statute, the Borough contends that pursuant to paragraph 1 and 6, its offer of a 2.75% increase is more than fair and reasonable as it takes into account the interests and welfare of the public. Therefore, the Borough requests that this offer be implemented by the Arbitrator.

Another issue of disagreement between the parties concerns the issue of Work in Higher Rank. This issue appears in the Agreement at Article 42.00. The existing provision reads as follows:

When an employee works in a higher rank for four (4) months or more, he shall receive the pay of the next higher rank for the period he works in a higher rank beyond the four (4) month period. The Chief of Police may not reassign for the sole purpose of defeating the intent of this clause.

In their last offers, the PBA seeks to delete any reference to a delay in receiving higher compensation and would make receipt of compensation in the higher rank effective upon the designation of the officer. The Borough indicated a willingness to consider reducing the amount of time that an officer would be eligible for higher pay but rejects the PBA's offer and seeks the status quo on this issue based upon the PBA's unwillingness to respond to certain proposals the Borough offered to the PBA.

The Borough has rejected preliminary proposals by the PBA to increase the uniform allowance, the number of paid holidays and increases in the mileage reimbursement rate for outside activity. Because these proposals have now

been eliminated from the PBA's last offer, they need not be considered in this proceeding.

In addition to the Borough's proposal for concessions in the area of the longevity benefit, it has proposed that changes be made in the provisions concerning sick leave, education incentive and medical and dental coverage. The PBA opposes that any changes be made in these areas of the Agreement.

The Borough's sick leave proposal would change Article 20.00 to have sick time be paid on an hour for hour basis rather than the current requirement that an officer not be charged a sick day if he or she works a minimum of four hours. The PBA contends that this proposal has not been justified in that the Borough has presented insufficient evidence that there has been abuse of this provision.

In respect to Education Incentive, the Borough seeks to modify the receipt of the maximum allowance of \$1,000 to when an officer actually earns or has earned college credits in that particular calendar year. The PBA has responded that the current provision only provides for modest payments and that there is no basis to disturb the existing contract language.

The Borough has proposed that there be employee contributions towards health insurance in the amount of \$20 per month per individual and \$40 per

month for family coverage. In support of this proposal, the Borough offers several arguments, including calculations showing that there have been considerably higher increases in health care costs during the 2004-2008 time period. The PBA opposes this proposal noting that health care costs for the Borough have recently been significantly reduced. According to the PBA, recent modifications to health care plans have actually resulted in reductions pointing to record testimony and documents that the premiums have recently been reduced from \$60,322 per month to \$50,795 per month.

DISCUSSION

The Borough and the PBA have offered testimony and considerable documentary evidence in support of their last offers. Each submission was expert and comprehensive in nature. The entire record of the proceeding must be considered in light of the statutory criteria. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) which I find relevant to the resolution of these negotiations.

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.)).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the

same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the

award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c 62 (C.40A:4-45.45).

While I must assess the merits of the disputed proposals individually, I refer to criterion N.J.S.A. 34:13A-16g (8). This criterion directs that consideration be given to factors ordinarily or traditionally considered in the determination of wages and benefits. Such factors require that consideration be given to the totality of the changes to be made to an existing agreement.

The Borough and the PBA have each addressed the statutory criteria in support of their respective positions in their post-hearing briefs and through extensive oral argument made at hearing. Although all of the criteria that have

been addressed are relevant, the factor to be given the most weight in this proceeding concerns the interests and welfare of the public. This factor embraces operational considerations of the department including services to be provided to the public and the efficiency and productivity of the police department. During this proceeding, it was evident that the parties have engaged in substantial litigation over many concerns that can be deemed operational. These activities are not only costly to the public but have potentially adverse impacts upon productivity, efficiency and morale. For this reason, I initially address the issue concerning work schedules.

It should be noted that any discussion of this issue should avoid criticisms of any police officer, superior officer or the Chief of Police. There has been sharp disagreement over what the work schedule should be for non-supervisory patrol division personnel. I am persuaded that there has been a decrease in department efficiency that relates to this disagreement. As stated previously, the eight (8) hour schedule exists in the Agreement and that between 1999-2005, the department experimented with a twelve (12) hour work day. It reverted back to the eight (8) hour day during the last three years. Precise findings and conclusions cannot be made as to the wisdom of having reverted back to the eight (8) hour day. One fact that is not in dispute is that the number of traffic summonses issued during 2006 and 2007 rapidly declined. Borough exhibits detail this decline. By way of example, the total summons issued in either 2006 or 2007 represent only 50% of what had been issued for any year between 2002

and 2005. The consequence of this decline dramatically impacted in negative fashion upon municipal court revenues. While all concerned recognize that the police department should not be viewed as simply a revenue source for a municipal budget, it appears that the revenue projections governing body and the public based upon many years of total summonses issues were not realized in recent years. There is no magic wand available that would result in a restoration of that revenue but I am convinced, based upon this record, that a trial return to the twelve (12) hour work day would create the potential for greater productivity and efficiency within the police department. A work chart for this proposal exists which would facilitate the immediate return to the work schedule that was in place between 1999 and 2005.

I am persuaded that the previous attempt to assess the effectiveness of the twelve (12) hour work schedule did not have the most desirable structure. For this reason, I have awarded a trial period in an effort to allow operations to be monitored in the most constructive fashion as possible. The trial period shall be for two years. This will allow for a reasonable period of time to judge matters of continuity.

Recent agreements between the Borough and the PBA to reduce overtime costs and by having senior patrol officers assume supervisory posts on Friday, Saturday and Sunday to resolve concerns over supervision shall not be disturbed by the trial period. A joint committee shall be created to include the Chief of

Police whose management authority should not be considered to have been challenged or diluted by this portion of the award. The committee must meet at least quarterly to discuss any operational or administrative issue that may arise. The impact of the change should consider, but not be limited to, employee morale, productivity, sick leave, overtime, staffing, training and manpower coverage during shifts. There should be a reasonable conclusion to the trial period. For this reason, my award includes an ability of either party who desires to revert to the current work schedule at the end of 2010 to serve written notice of its intention on the other party at least ninety (90) days prior to the end of that year. Any objection to receipt of that notice will require notice to the other party that immediate discussions should begin in an effort to resolve any disputes concerning the schedule. In the event of an inability to reach an agreement, either party shall have the right to submit the dispute to expedited binding arbitration to an arbitrator mutually designated by the parties. If they are unable to agree upon an arbitrator, the parties shall select another arbitrator in accordance with the procedures of the Public Employment Relations Commission regarding the Special Panel of Interest Arbitrators. The arbitrator's decision shall be final and binding on the parties. If neither party elects to exercise its rights under this section at the end of this Agreement, the twelve (12) hour work schedule shall become the permanent work schedule.

During the time period of the work schedule change, the issue of the amount of paid time off must be addressed. The amount of paid time off shall not

be increased or decreased as a result of the work schedule change and shall remain the same based upon paid time off being calculated on an hour to hour basis. That is, the amount of paid time off on an hourly basis under the eight (8) hour shift shall remain the same number of hours despite the change to the twelve (12) hour work day.

Based upon all of the above, I award the following language to supplement that which exists in Article 8.00:

Effective as soon as is operationally feasible, the normal workday tour shall be twelve (12) hours in a twenty-four (24) hour period pursuant to a trial work schedule program which shall remain in effect until December 31, 2010. The twelve (12) hour work schedule shall be implemented for non-supervisory patrol division personnel in the same form as was in effect between 1999 and 2005, including having senior patrol officers assume supervisory posts on Friday, Saturday and Sunday to resolve concerns over supervision. The trial program shall not void a July 2008 agreement between the Borough and the PBA to reduce overtime costs by the manner in which staffing levels are set. A joint committee which shall include the Chief of Police, shall meet at least quarterly to discuss any operation or administrative issues of mutual concern that may arise. The Borough and the PBA shall, among other things, consider the impact of the change to a twelve (12) hour work schedule from the prior schedule, including but not limited to employee morale, productivity, sick leave, overtime, staffing, training, manpower coverage and the like.

If either party desires to revert to the current work schedule at the end of 2010, it shall serve written notice of its intention to do so on the other party at least ninety (90) days prior to the end of that year. If the party receiving notice objects to the notice, it shall so notify the other and the parties agree to meet and confer in an effort to resolve any disputes concerning the schedule. If the parties are unable to reach agreement, either party shall have the right to submit the dispute to expedited binding arbitration to an arbitrator mutually designated by the parties. If they are unable to agree upon an arbitrator, the parties shall select another arbitrator in accordance with the procedures of the Public Employment Relations Commission regarding the Special Panel of Interest Arbitrators. The arbitrator's decision shall be final and binding on the parties. If neither

party elects to exercise its rights under this section at the end of this Agreement, the twelve (12) hour work schedule shall become the permanent work schedule. There shall be a conversion of paid time off on an hour by hour rather than a day by day basis.

I next address the issue of longevity. Based upon the existing levels of compensation and benefits received by unit personnel, I conclude that a modification rather than an elimination of longevity is the most reasonable determination of this issue. The Agreement currently provides for a longevity provision that pays a 1% benefit linked to the completion of a specific number of years of service. Officers who were hired prior to January 1, 1997 received 1% upon completion of three (3) years of service and one-third of one percent (1/3%) for each additional year of completed service. The parties agreed to modify longevity for employees hired after January 1, 1997 whose commencement of longevity payments became based upon six years of service rather than three years of service. A continuation of this approach would be consistent with the previous efforts of the parties and result in some cost offsets for the Borough. Accordingly, I award a modification to Article 15.01 to change the commencement of the longevity benefit upon the completion of nine (9) years of service. The new longevity provision shall read as follows:

15.01 In addition to all wages and other benefits, each Employee shall be entitled to a longevity payment as follows:

Longevity shall be one (1%) percent upon completion of three (3) years service and one-third of one (1/3%) percent of the Employee's base wages for such additional year of completed service. Employees hired on or after January 1, 2009 shall commence to receive longevity upon completion of nine (9) years of service.

15.02 All employment dates for purposes of the longevity clause shall be considered to be the first day of January of the year of initial employment.

15.03 The said payments for longevity shall be paid on a weekly basis to the Employees entitled to same.

I next turn to the issue of salary. The Borough proposes a four (4) year agreement with two and three quarter (2.75%) percent increases each year, while the PBA proposes an agreement of the same duration but with annual increases of five (5%) percent.

In my evaluation of this issue, I have reviewed the comprehensive financial budgetary data submitted into the record. This includes the Borough's overall financial health including statutory spending limitations, the caps on increases and its tax levy. Comparability with other law enforcement personnel in communities offered for comparison purposes is also a factor to be given weight in this proceeding.

The general financial health of the Borough is positive. During 2007, its total real estate tax revenues increased by \$1,889,523 or 5.4% to \$36,924,934. Its tax collection rate over the last three years has averaged 98.9%. Financial reports reflect an increase in redevelopment within the Borough. Its net outstanding debt is less than 1% of its equalized value. Its general tax rate is one of the lowest in the area. As reflected in the County of Bergen Final Equalization Table for 2008, the Borough's net valuation taxable far exceeds that

of nearby Haworth, Harrington Park, Northvale, Norwood and Old Tappan. The budgetary data further reflects that the Borough's finances do not conflict with either the budget cap law or the tax levy cap.

The financial ability of the Borough cannot translate into an award of the PBA's proposal. The mere existence of funds available to support a wage proposal does not require the awarding of that proposal. I do not find support in the record for an award at or near either party's salary proposal. A reasonable determination of this issue, after giving due weight to the statutory criteria, is 4% for each year of the new Agreement.

A base wage point can be calculated at \$21,660. The award exceeds the Borough's 2.75% proposal by \$27,000 in 2008, an additional \$28,080 in 2009, an additional \$29,203 in 2010, and an additional \$30,371 in 2011. Although the Borough should not be required to expend its cap flexibility, the costs are well below the \$235,000 amount of cap flexibility in the 2008 budget and significantly below the amount in excess of allowable levy which has been calculated by the Employer at \$483,096. When the total tax levy is measured against the increases in costs for bargaining unit personnel, there is no evidence that the award would cause adverse financial impact on the governing body, its residents or taxpayers. The terms of the award fall within the comparability data reflected in the record.

Although the record reflects larger increases in Haworth (4.4%), Oaklyn (5.4% and 4.2%), Old Tappan (4.25%) and Ridgewood (4.2%), there are other factors which mitigate against awarding the PBA's proposal or a level beyond that has been awarded. Despite the fact that the Borough's finances are strong, it has had a declining fund balance over the last several years as reflected a Borough exhibit [B. Ex. #7]:

**Summary of Year End Surplus and Amount
Utilized in Succeeding Years' Budget
Last Ten Years**

Year	Fund Balance December 31	Utilized in Succeeding Years Budget	Balance Available
2007 (unaudited)	\$ 981,907	\$ 750,000	\$231,907
2006	\$1,647,104	\$1,340,000	\$307,104
2005	\$1,848,022	\$1,330,000	\$518,022
2004	\$1,780,379	\$1,180,000	\$600,379

Moreover, the overall levels of compensation and benefits received by the Borough's police officers do not justify salary increases beyond that which have been awarded. I have considered the other statutory factors. The cost of living evidence in the record shows increases that average slightly below that which has been awarded. More recent cost of living figures have been volatile, showing one month that exceeded 5% when calculated on an annual basis, to one month showing a negative increase. Future projections are uncertain and more reliance must be given to the data over the last two years. In any event, the cost of living data is not controlling and is only one of the relevant factors in the rendering of the award.

While relevant, I do not find the continuity and stability of employment factor to be a major consideration. The data does not show unusual turnover in personnel. Yet, it should be noted that the department has operated in lean fashion. It has operated without a Captain with a small number of police officers being available for patrol duties and non-supervisory personnel have been serving in supervisory capacities with little opportunity for promotional advancement.

The remaining issues in dispute have been thoroughly evaluated and, after doing so, I find that neither party has met its burden to establish the changes that it has sought in the respective last offers. After demonstrated opposition by the Borough, the PBA has withdrawn its proposals for increases in uniform allowance, paid holidays and mileage allowance. I deny the PBA's proposal for the deletion of the current four (4) month delay for receipt of the higher rank compensation rate. Whatever justification there may be for a reduction in this delay, should be deferred until the negotiations for the next agreement after the parties have experience with the trial work schedule.

I also find that the Borough's proposals with respect to sick leave and education incentive have not met the requisite burden to change these existing provisions in the agreement. The Borough has established that the sick leave language could be susceptible to abuse, but the evidence does not reflect the existence of abuse.

The remaining issue is the Borough's proposal for the co-payment of insurance premiums. Although the Borough has forcefully articulated positions in support of this proposal, I do not award changes to Article 25.00. The record reflects that the PBA has agreed to certain changes in the insurance program in the past, including an "opt out waiver right" and the right to institute a \$1 million cap per individual covered person. Recent monthly premium data reflects a significant decrease in premiums. The existing agreement, at Article 25.06 provides for a medical insurance review committee for the purpose of making an effort to provide cost effective medical insurance. The committee is empowered to investigate and to make appropriate recommendations for ratification by their respective teams. The committee can monitor the health insurance issue during the term of this agreement, recommend any changes that are mutually agreed upon and can provide accurate data to support any proposed changes that either party wishes to make during future negotiations.

Accordingly, and based upon all of the above, I respectfully enter the following award as a reasonable determination of the issues in dispute.

AWARD

1. All proposals by the Borough and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreements shall be carried forward except for those modified by the terms of this Award.

2. **Duration**

There shall be a four year agreement effective January 1, 2008 through December 31, 2011.

3. **Longevity – Article 15.00**

Article 15.01 shall be modified to increase the years of service for which the payment of longevity shall commence from the completion of six (6) years of service to the completion of nine (9) years of service. The new longevity plan at Article 15.00 shall read:

15.01 In addition to all wages and other benefits, each Employee shall be entitled to a longevity payment as follows:

Longevity shall be one (1%) percent upon completion of three (3) years service and one-third of one (1/3%) percent of the Employee's base wages for such additional year of completed service. Employees hired on or after January 1, 2009 shall commence to receive longevity upon completion of nine (9) years of service.

15.02 All employment dates for purposes of the longevity clause shall be considered to be the first day of January of the year of initial employment.

15.03 The said payments for longevity shall be paid on a weekly basis to the Employees entitled to same.

4. **Salary – Article 7.00**

The base annual salaries of all employees covered by the Agreement as set forth in Appendix "A" shall be increased by 4.0% at each step on January 1 of contract years 2008, 2009, 2010 and 2011 effective and retroactive to each date of increase. Those eligible for retroactivity shall be those presently employed, those who have retired to their date of retirement and those who may have retired on ordinary or disability pension to their date of retirement.


5. **Workday, Work Week and Overtime – Article 8.00**

Effective as soon as is operationally feasible, the normal workday tour shall be twelve (12) hours in a twenty-four (24) hour period pursuant to a trial work schedule program which shall remain in effect until December 31, 2010. The twelve (12) hour work schedule shall be implemented for non-supervisory patrol division personnel in the same form as was in

effect between 1999 and 2005, including having senior patrol officers assume supervisory posts on Friday, Saturday and Sunday to resolve concerns over supervision. The trial program shall not void a July 2008 agreement between the Borough and the PBA to reduce overtime costs by the manner in which staffing levels are set. A joint committee which shall include the Chief of Police, shall meet at least quarterly to discuss any operation or administrative issues of mutual concern that may arise. The Borough and the PBA shall, among other things, consider the impact of the change to a twelve (12) hour work schedule from the prior schedule, including but not limited to employee morale, productivity, sick leave, overtime, staffing, training, manpower coverage and the like.

If either party desires to revert to the current work schedule at the end of 2010, it shall serve written notice of its intention to do so on the other party at least ninety (90) days prior to the end of that year. If the party receiving notice objects to the notice, it shall so notify the other and the parties agree to meet and confer in an effort to resolve any disputes concerning the schedule. If the parties are unable to reach agreement, either party shall have the right to submit the dispute to expedited binding arbitration to an arbitrator mutually designated by the parties. If they are unable to agree upon an arbitrator, the parties shall select another arbitrator in accordance with the procedures of the Public Employment Relations Commission regarding the Special Panel of Interest Arbitrators. The arbitrator's decision shall be final and binding on the parties. If neither party elects to exercise its rights under this section at the end of this Agreement, the twelve (12) hour work schedule shall become the permanent work schedule. There shall be a conversion of paid time off on an hour by hour rather than a day by day basis.

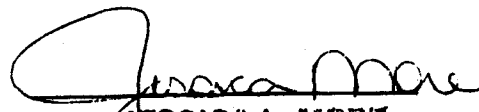
Dated: January 6, 2009
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 6th day of January, 2009, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



JESSICA L. MOORE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 10, 2011